

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK ANTHONY BROWN,

Plaintiff,

v.

W. EMMERT, et al.,

Defendants.

No. 2:22-cv-1001 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil action. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

////

1 The court is required to screen complaints brought by prisoners seeking relief against a  
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 Having conducted the required screening, the court finds that plaintiff may proceed on the  
7 following claims:

8 1. A claim arising under the Eighth Amendment against defendant Emmert for exposure  
9 to harmful conditions of confinement when Emmert referred to plaintiff as a “rat” over a loud-  
10 speaker.

11 2. Claims arising under the Eighth Amendment against defendants Wooden and Gonzales  
12 for exposure to harmful conditions of confinement with respect to their not taking preventative  
13 measures when defendant Emmert referred to plaintiff as a “rat” over a loud-speaker.

14 3. A claim arising under the First Amendment against defendant Emmert for retaliating  
15 against plaintiff for filing a prisoner grievance by calling plaintiff a “rat” over a loud-speaker and  
16 by denying plaintiff phone calls and showers.

17 4. Claims arising under the Eighth Amendment for failure to provide medical treatment  
18 against defendants Drake, Tuyen, Archie and Lieu for their failure to provide plaintiff with his  
19 inhaler and decontaminate plaintiff from exposure to pepper spray.

20 At this point, plaintiff has two options: 1) proceed on the claims identified above; or 2)  
21 attempt to cure the deficiencies in plaintiff’s complaint in an amended complaint. In considering  
22 whether to amend, the court advises plaintiff as follows:

23 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or  
24 connection between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S.  
25 362 (1976). Furthermore, vague and conclusory allegations of official participation in civil rights  
26 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

27 In order for conditions of confinement to amount to a violation of the Eighth Amendment,  
28 the conditions must amount to cruel and unusual punishment. The occasional denial of a shower

1 or phone calls does not amount to cruel and unusual punishment. Denial of a shower for an  
2 extended period of time can violate a prisoner's right to personal hygiene. Toussaint v.  
3 McCarthy, 597 F. Supp.1388, 1411 (N.D. Cal. 1984).

4 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to  
5 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended  
6 complaint be complete in itself without reference to any prior pleading. This is because, as a  
7 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375  
8 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no  
9 longer serves any function in the case. Therefore, in an amended complaint, as in an original  
10 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

11 In accordance with the above, IT IS HEREBY ORDERED that:

12 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

13 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees  
14 shall be collected and paid in accordance with this court's order to the Director of the California  
15 Department of Corrections and Rehabilitation filed concurrently herewith.

16 3. Plaintiff is granted 21 days within which to complete and return the attached form  
17 notifying the court whether he wants to proceed on the claims described in this order or whether  
18 he wishes to file an amended complaint in an attempt to cure the deficiencies in his original  
19 complaint. If plaintiff does not return the form, this action will proceed on the claims described  
20 above.

21 Dated: August 16, 2022

22   
23 CAROLYN K. DELANEY  
24 UNITED STATES MAGISTRATE JUDGE

25  
26 1/hh  
27 brow1001.op  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK ANTHONY BROWN,

Plaintiff,

v.

W. EMMERT, et al.,

Defendants.

No. 2:22-cv-1001 CKD P

PLAINTIFF'S NOTICE OF

HOW TO PROCEED

Check one:

\_\_\_\_\_ Plaintiff wants to proceed immediately on the following claims:

1. A claim arising under the Eighth Amendment against defendant Emmert for exposure to harmful conditions of confinement when Emmert referred to plaintiff as a "rat" over a loud-speaker.

2. Claims arising under the Eighth Amendment against defendants Wooden and Gonzales for exposure to harmful conditions of confinement with respect to their not taking preventative measures when defendant Emmert referred to plaintiff as a "rat" in front over a loud speaker.

3. A claim arising under the First Amendment against defendant Emmert for retaliating against plaintiff for filing a prisoner grievance by calling plaintiff a "rat" over a loud-speaker and denying plaintiff phone calls and showers.

4. Claims arising under the Eighth Amendment for failure to provide medical treatment against defendants Drake, Tuyen, Archie and Lieu for their failure to provide plaintiff with his inhaler and decontaminate plaintiff from exposure to pepper spray.

\_\_\_\_\_ Plaintiff wants time to file an amended complaint.

DATED:

Plaintiff's Signature